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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/859,389      | 05/18/2001  | Carl R. Alving       | 182.0010/WRAIR00-26 | 3181             |

7590

09/20/2002

ATTN: MCMR-JA (Ms Elizabeth Arwine)  
Office of the Staff Judge Advocate US Army Research  
504 Scott Street  
Fort Detrick, MD 21702-5012

EXAMINER

COOK, LISA V

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1641

DATE MAILED: 09/20/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/859,389

Applicant(s)

ALVING ET AL.

Examiner

Lisa V. Cook

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I – claims 1-12, 15-18, and 20-21 are drawn to a method for detecting the presence of squalene antibodies, classified in Class 435, subclass 7.1.

Group II – claims 13-14 and 19 are drawn to a method for detecting the presence of squalene antibodies utilizing an ELISA protocol, classified in class 435, subclass 7.92.

2. The inventions are distinct, each from the other because of the following reasons:

Each of the method Groups of the present invention (I and II) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different operations and effects. Although both inventions are directed to antibody detection they utilize different and diverse methods to achieve that end. The invention of Group II requires ELISA procedures, while the method of Group I is not limited to ELISA techniques but could be performed by any other process such as radioimmunoassays. This is supported by the disclosure on page 9, lines 20-23. Therein each of the methods are diverse having different steps and utilize different reagents.

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3. Because these inventions are distinct for the reasons given above and have acquired separate status in the art as shown by their different classification, recognized divergent subject matter and because the search required for each invention is not substantially coextensive with the search required for the remaining invention, restriction for examination purposes as indicated is proper. Please note that the classifications in the restriction are illustrative only and do **not** represent all the classes and subclasses which must be searched for each invention; nor is the search limited to issued US patents, but rather includes published foreign patents and applications as well as literature search, which in this case would be divergent for each of the claimed inventions. While searches would be expected to overlap, there is no reason to expect the searches to be coextensive.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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6. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO fax Center located in Crystal Mall 1. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1641 Fax number is (703) 308-4242, which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa V. Cook whose telephone number is (703) 305-0808. The examiner can normally be reached on Monday – Friday from 8:00AM – 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le, can be reached on (703) 305-3399.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



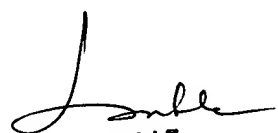
*Lisa V. Cook*

*Art Unit 1641*

*CM1-7B17*

*(703) 305-0808*

*July 30, 2002*



LONG V. LE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600  
07/18/02